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Ministry of Fisheries
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Attention: Denise Ashley

RECONSIDERATION OF MEASURES TO MANAGE FISHING-RELATED THREATS TO MAUI'S AND HECTOR'S DOLPHINS

The Environmental Defence Society (EDS) welcomes the opportunity to comment on the Ministry of Fisheries' Initial Position Paper on options available to the Minister of Fisheries to avoid, remedy or mitigate the effects of fishing on Hector's and Maui's dolphin.

EDS is concerned to ensure a precautionary approach to the management of fisheries interactions with Hector's and Maui's dolphin is taken and that effective and urgent measures for their protection are implemented given the threatened status of these endemic species.

BACKGROUND TO EDS

EDS is a public interest environmental law group, formed in 1971, with a membership consisting largely of resource management professionals. The focus of EDS's work is on achieving good environment outcomes through improving the quality of New Zealand's legal and policy frameworks and statutory decision making processes.

EDS has had a long interest in the management of New Zealand's coast and oceans and in marine conservation.

- In 2005 EDS published a report on oceans governance titled *Looking out to sea: New Zealand as a model for ocean governance*.
- In 2007 EDS published a report investigating integrated coastal management titled *Beyond the tide: Integrating the management of New Zealand's coasts*. The report was reprinted in 2009 with support from the Hauraki Gulf Forum.
- Last year, EDS released a policy paper on the establishment of an Environmental Protection Authority (EPA) titled *Improving environmental governance: the role of an Environmental Protection Authority*. This paper canvassed gaps in current marine management (amongst other things) and proposed a role for the EPA which would include oversight of coastal and marine management. It also proposed the establishment of a Coastal Commission.

- In 2009 EDS also launched a comprehensive book on coastal management titled *Castles in the Sand: What's happening to the New Zealand coast?*
- In April 2010 EDS launched a comprehensive guide to how the New Zealand's marine area is currently managed titled *Managing the Marine Environment*.
- EDS is involved in ongoing work on coastal and marine conservation and management issues. In particular, EDS is currently undertaking research into the adequacy of the current legal and policy framework for managing human impacts on marine mammals.

SUMMARY OF EDS SUBMISSIONS

EDS's submission focuses on the following two points:

1. The Minister of Fisheries should prohibit commercial set net fishing between 4 and 7 nm from Pariokariwa Point and Maunganui Bluff in the WCNI (Option 3).
2. The Minister of Fisheries should include the commercial targeted butterfish fishery in the closure of part of the ECSI to set net fishing (Option 3).

These points are expanded on in the sections following.

LEGISLATIVE FRAMEWORK FOR MINISTER'S DECISION

The Minister's decision is to be made pursuant to s 15(2) of the Fisheries Act 1996 which provides that:

In the absence of a population management plan, the Minister may, after consultation with the Minister of Conservation, take such measures as he or she considers are necessary to avoid, remedy, or mitigate the effect of fishing-related mortality on any protected species, and such measures may include setting a limit on fishing-related mortality.

In taking measures under this section:

- A precautionary approach is available to the Minister (*Squid Fishery Management Ltd v Ministry of Fisheries & Anor CA*(Squid (No. 2) 39/04 13 July 2004).
- A value judgment is required (*Squid Fishery Management Ltd v Ministry of Fisheries & Anor CA* (Squid (No. 2) 39/04 13 July 2004).
- There is no simple method by which risk on the one hand can be balanced against utilisation advantages on the other (*Squid Fishery Management Ltd v Ministry of Fisheries & Anor CA*(Squid (No. 2) 39/04 13 July 2004).
- The Minister can only take measures he or she considers necessary to avoid, remedy or mitigate adverse effects of fishing on protected species (*New Zealand Federation*

of Commercial Fishermen Incorporated v Minister of Fisheries CIV-2008-485-2016, 23 February 2010).

Also relevant to the Minister's decision under section 15(2) is section 8 which sets out the Act's purpose:

8 Purpose

(1) The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability.

(2) In this Act—

“Ensuring sustainability” means—

(a) Maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and

(b) Avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment:

“Utilisation” means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural wellbeing.

The Minister must also take account of environmental principles in making his decision under section 15(2):

9 Environmental principles

All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following environmental principles:

(a) Associated or dependent species should be maintained above a level that ensures their long-term viability:

(b) Biological diversity of the aquatic environment should be maintained:

(c) Habitat of particular significance for fisheries management should be protected.

The information principles provided for in section 10 also require the Minister to take into account the principle that decisions “should be based on the best available information”.

THE EXTENSION OF THE SET NET CLOSURE FOR COMMERCIAL FISHERS ON THE WCNI TO INCLUDE THE AREA BETWEEN 4 AND 7 NAUTICAL MILES

EDS urges the Minister of Fisheries to prohibit commercial set net fishing between 4 and 7 nm from Pariokariwa Point and Maunganui Bluff (Option 3).

Reasons

1. There is conclusive evidence Maui's dolphins visit areas beyond 4 nm in the WCNI. Since the Minister of Fisheries made his decision in 2008 there have been additional research sightings which further verify the presence of Maui's dolphins beyond 4 nm in WCNI. Childerhouse et al (2008) sighted a dolphin at 4.3 nm from shore in May 2008 and Stanley (2009) sighted a dolphin at 6.18 nm in June 2009. Du Fresne (2010) considers that both of these surveys were conducted by appropriately experienced observers.

2. There is no doubt that set nets are a cause of mortality for Maui's dolphins. There are 2 recorded cases of entanglement in nets and subsequent death of Maui's dolphins in the WCNI as set out in table 4 of the Initial Position Paper. The Ministry of Fisheries considers this figure represents the minimum level of fishing related mortality as in a large number of cases cause of death is not firmly established and reported mortality is likely to be an underestimate of total mortality.
3. The risk to the Maui's dolphin population if set net mortality occurs is very high. Potential biological removal level analysis indicates that Maui's dolphin can sustain no more than 0.2 human-induced deaths per year (1 dolphin every 5 years). The population is so small that one fishing-related mortality effectively constitutes an effect on the population and may be sufficient to limit the population from rebuilding to optimal size (Ministry of Fisheries Initial Position Paper 2010). In addition, life history characteristics including a low reproductive rate and late sexual maturity compound the potential impact of fishing mortalities.
4. EDS considers the high risk to the dolphin population if interaction with fisheries occurs warrants a strong precautionary approach to be applied in determining whether measures are necessary to avoid, remedy, or mitigate the effect of fishing-related mortality.
5. This approach also takes into account the principle that associated or dependent species should be maintained above a level that ensures their long-term viability as required by section 9 of the Fisheries Act.

THE INCLUSION OF THE COMMERCIAL TARGETED BUTTERFISH FISHERY IN THE CLOSURE OF PART OF THE ECSI TO SET NET FISHING

EDS urges the Minister of Fisheries not to exempt targeted commercial butterfish set net fishing at the northern end of the ECSI, from the prohibition on set net fishing out to 4 nm from shore (Option 3).

Reasons

1. Dolphins have been seen in areas north and south of the relevant area in the ECSI and Ministry of Fisheries has indicated that dolphins will at least transit through the relevant area.
2. Hector's dolphins are known to be susceptible to entanglement in set nets. While there are no records of mortality of dolphins specifically from commercial butterfish fishing operations this does not mean that mortality has not occurred. This is especially the case given observer coverage has been low for commercial butterfish operations and there are poor incentives to report non-observed mortality.
3. Dependent on the inputs used, PBR analysis suggests 2-13 mortalities per year would allow the population to rebuild or remain healthy. However when the analysis has a

recovery factor built into it (allowing the population to increase in size), PBR analysis suggests the population can only sustain 2-4 deaths per year.

4. Three dolphin mortalities have been observed between May 2009 and January 2010. Ministry of Fisheries suggests in the initial position paper there is a risk that the actual level of mortalities of Hector's dolphins in the ECSI may exceed the higher bound of the PBR as the level of observer coverage was low during the 2009 calendar year.
5. EDS considers these circumstances warrant a strong precautionary approach to be applied in determining whether measures are necessary to avoid, remedy, or mitigate the effect of fishing-related mortality. Exempting targeted commercial butterfly set net fishing increases the risk that the level of mortalities of Hector's dolphins in the ECSI will exceed the level which will allow the population to rebuild or remain healthy.
6. This approach also takes into account the principle that associated or dependent species should be maintained above a level that ensures their long-term viability as required by section 9 of the Fisheries Act.

CONCLUSION

EDS would welcome the opportunity to discuss our submissions further with you.

Yours sincerely



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